

DARIUSH KEYHANI (DK9673) (*pro hac vice*)
MEREDITH & KEYHANI, PLLC
330 Madison Avenue, 6th Floor
New York, New York 10017
Telephone: 212.760.0098
Direct Dial: 646.536.5692
Facsimile: 212.202.3819
Email: dkeyhani@meredithkeyhani.com

JACQUELYN S. LELEU, ESQ.
Nevada Bar No. 7675
AMANDA C. YEN, ESQ.
Nevada Bar No. 9726
JOSEPH P. SCHRAGE, ESQ.
Nevada Bar No. 11270
McDONALD CARANO WILSON LLP
2300 W. Sahara Avenue, Ste. 1200
Las Vegas, NV 89102
Telephone: 702.873.4100
Facsimile: 702.873.9966
Email: jleleu@mcdonaldcarano.com
ayen@mcdonaldcarano.com
jschrage@mcdonaldcarano.com

Attorneys for Plaintiff LT Game International Ltd.

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

LT GAME INTERNATIONAL LTD.,

CASE NO. 2:12-cv-01216-JAD-GWF

Plaintiff,

**LT GAME INTERNATIONAL LTD.'S
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS THIRD
AMENDED COMPLAINT, OR IN THE
ALTERNATIVE, MOTION FOR
SUMMARY JUDGMENT**

SHRIJEE LE MASTERS INC

Defendant.

I. PRELIMINARY STATEMENT

Over the past five years, defendant SHFL Entertainment, Inc. f/k/a Shuffle Master, Inc. (“SHFL”) has used every trick in the book to undermine the LT Game Group’s sale and distribution of its market-dominating Live Table Multi-Game electronic gaming product/system (“LTMG”) and obstruct the introduction of this product into the U.S. Not surprisingly, these

1 tricks continue to this day, as Defendant's motion is riddled with inaccurate versions of facts
 2 and misleading conceptions of the law.

3 Defendant's version of the facts is simply wrong. Defendant misstates the law, ignores
 4 the facts, and tells a tale that is inconsistent with the evidence—this is a case about a company
 5 that cannot compete on the merits of its products and instead chooses to cheat. *See* Plaintiff's
 6 Third Amended Complaint (Dkt. 115).¹ These actions permeate SHFL's entire organization.
 7 [REDACTED]

8 The law of unfair competition is flexible and broad and encompasses unfair business
 9 practices and cheating in any form – even those not yet imagined. The depth and scope of this
 10 body of law is supported by a rich history of precedent and legal scholarship. Contrary to
 11 Defendant's claim, the Lanham Act provides a cause of action even when false statements are
 12 made in person directly to a customer or prospective customer. Defendant's actions, including
 13 bad faith allegations of patent infringement made to Plaintiff's customers and prospective
 14 customers and false representations about the ethics and reputation of Plaintiff and its business
 15 activities, clearly constitute unfair competition. As set forth below, Plaintiff has proffered more
 16 than ample evidence to support its cause of action under the Lanham Act and other claims in
 17 this case.

19

20 ¹ Contrary to Defendant's claim, the Third Amended Complaint only asserts additional
 21 context and details relating to LT Game International's claims against SHFL consistent with the
 22 direction of this Court's March 26, 2014 Opinion and Order. *See* Order (Dkt. 112). The
 23 additional factual detail alleged in the amended pleading is based on information arising out of
 24 almost one year of discovery in this case. For at least nine months, Defendant was well aware
 25 that LT Game International was the exclusive licensee of LT Game for the sale and distribution
 26 of LTMG outside of Macau, as LT Game International's principal, Frank Feng, testified to this
 fact at his deposition in July of 2013. *See* Frank Feng Deposition Transcript, Vol. I ("Feng Tr.
 Vol. I") at 111:13-16, pertinent portions of which are attached hereto as **Exhibit 1**. Defendant's
 claim that Plaintiff's allegations in its amended pleading contradict its original pleading is false.
 In addition to other unlawful actions perpetrated by Defendant alleged by Plaintiff, Plaintiff has
 always maintained that Defendant has made false representations regarding Plaintiff, its
 business activities, and its products, and Plaintiff has obtained substantial evidence to support
 these claims.

27 A redacted version and a sealed version of the Third Amended Complaint were filed in
 28 this case. When two versions of a document were so filed, this Opposition will cite to the
 sealed version.

1 SHFL's international campaign of unfair competition has caused and continues to cause
 2 LT Game International, Ltd. ("LT Game International" or "Plaintiff") irreparable harm that
 3 warrants a remedy. The time has come for SHFL to compete fairly.

4 **II. STATEMENT OF FACTS AND BACKGROUND**

5 **A. SHFL has been unable to compete with LT Game in the world's largest
 6 gaming industry**

7 At \$38 billion in revenue per year, the Macau gaming market is almost five times the
 8 size of the Las Vegas strip and larger than the total U.S. casino industry combined. *See Howard*
 9 *Stutz, Macau Gaming Revenues Growing in 2012, Hit Record \$38 Billion*, Las Vegas Review
 10 Journal, <http://www.reviewjournal.com/business/casinos-gaming/macau-gaming-revenues-grow-2012-hit-record-38-billion>, attached hereto as **Exhibit 2**.² Though large, the market is a
 11 tight knit community, consisting of a small number of buyers that operate gaming properties all
 12 around the world. *See* Expert Report of Alan P. Meister ("Meister Report") at 4-6, attached to
 13 the Declaration of Alan P. Meister ("Meister Declaration") (Dkt. 98). As a tight knit
 14 community in a highly regulated market, reputation means everything and word travels fast. *Id.*
 15

16 Both the LT Game Group and SHFL products compete in the Macau market, and both
 17 companies have competing products in the market's electronic table systems ("ETS") segment.
 18 *See* Brandon Knowles Deposition Transcript ("Knowles Tr.") at 35:5-7, pertinent portions of
 19 which are attached hereto as **Exhibit 3**. LT Game Ltd. ("LT Game"), LT Game International's
 20 licensor and business partner (LT Game and LT Game International are collectively referred to
 21 herein as "LT Game Group"), first entered the ETS market in 2006 with their LTMG and
 22 rapidly became the market leader. *Id.* at 25:10- 17. Indeed, LT Game dominates the ETS
 23 segment, controlling more than 50% of the market share. *Id.* at 34:12-23. With terminals
 24 installed at gaming operations all across Macau, LTMG has had great success in the ETS
 25 market and enjoys a reputation of being innovative and well liked. *Id.* at 37:1-10 (describing
 26 LT Game as being the first to market a product customers like); *see also* Feng Tr. Vol. I at
 27 159:23-160:2, **Exhibit 1**.

28 ² "This court may take judicial notice of adjudicative facts appearing in newspapers." *See*
Crowder v. Kitagawa, 81 F.3d 1480, 1492 (9th Cir. 1996).

1 Like the LT Game Group, SHFL also competes in the ETS market. *See* Knowles Tr. at
 2 17:5-12, **Exhibit 3**. SHFL's Rapid product line ("Rapid") directly competes with LT Game's
 3 LTMG. *Id.* at 22:15-23:17 (describing the Rapid product line as competing with LT Game).
 4 Unlike the LT Game Group, however, SHFL has failed to make a dent in the ETS market. *See*
 5 *id.* at 35:5-7. Despite efforts to grow in this market, SHFL has only been able to realize less
 6 than five percent of the market. *Id.* at 35:5-14 (explaining that SHFL has invested money and
 7 resources into marketing and other activities to grow its market share). As LTMG is the most
 8 successful product in the market, the LT Game Group has been a serious threat to SHFL. *Id.* at
 9 43:9-12.

10 Following its success in the Macau market, LT Game began focusing on expanding to
 11 other countries, including the U.S. *Id.* at 48:1-51:8; *see also* Feng Tr. Vol. I at 61:20-62:8,

12 **Exhibit 1.** [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

Through LT Game International,

16 Feng began marketing and distributing LT Game's LTMG outside of Macau. *See id.* at 57:16-
 17 20. As a result, LT Game International has been successful in developing relationships and
 18 entering into lucrative prospective deals with industry leaders. *See* Knowles Tr. at 43:21-44:4,

19 **Exhibit 3** [REDACTED]

20 [REDACTED]

Not surprisingly, LTMG has found success in the U.S., including a
 21 recent installation [REDACTED]

22 [REDACTED]

23 [REDACTED]

See Exhibits 1-3 attached to the Declaration of Frank Feng ("Feng Decl.") (Dkt. 97).

24

Upon learning LT Game Group was poised to enter the U.S. market, SHFL became
 25 concerned. *See* Knowles Tr. at 43:9-12, **Exhibit 3**. News of LT Game Group's expansion plan
 26 spread like wildfire. *See id.* at 48:21-49:12. In fear of losing market share to LT Game Group,
 27 SHFL took action. But instead of competing with LT Game Group on the merits, by making its
 28 product or pricing more competitive, SHFL engaged in an unscrupulous, international campaign

1 of unfair competition. *See* Plaintiff's Third Amended Complaint (Dkt. 115); [REDACTED]

2 [REDACTED]; Feng. Decl. ¶¶ 8-11 (explaining false
 3 statements made to customers); Jay Chun Deposition Transcript ("Chun Tr.") at 51:2-52:17,
 4 70:8-71:25; 62:20-63:5, pertinent portions of which are attached hereto as **Exhibit 5**; Knowles
 5 Tr. at 169:24-174:14, **Exhibit 3** (hereinafter collectively "evidence of Defendant's unlawful
 6 acts").

7 **B. SHFL embarks on an international campaign of unfair competition**

8 Over the past few years, SHFL has systemically been unfairly competing with LT Game
 9 Group in gaming markets throughout the world. *See id.* Through the use of threats,
 10 disparagement of the LT Game brand and its products, and direct and indirect interference with
 11 LT Game International's business contacts and prospective customers, SHFL has succeeded in
 12 damaging LT Game International's deals and prospective deals. *See* Meister Report at 6-7;
 13 Feng Decl. ¶¶ 8-13, 20-28; A Preliminary Analysis of Economic Damages ("Giuffre Report")
 14 attached to the Declaration of Dennis M. Giuffre ("Giuffre Decl.") (Dkt. 99). SHFL's
 15 ambitious early efforts began in 2009 when it attempted to coerce and threaten LT Game
 16 President Jay Chun into giving SHFL its valuable patents. *See* Chun Tr. at 51:2-52:17, 70:8-
 17 71:25 (explaining SHFL's patent pool proposals in 2009 and 2012), **Exhibit 5**. SHFL has twice
 18 tried to strong arm LT Game into entering a shared patent pool, where LT Game would put all
 19 of its patents and SHFL would put nothing valuable. *See id.* Chun was told that if he agreed,
 20 SHFL would provide him with protection, and if he refused, SHFL would exhaust LT Game
 21 through litigation. *See id.* Despite mafia-like offers of protection and threats of litigation, Chun
 22 refused to give LT Game's intellectual property to SHFL. *Id.* at 52:13-17.

23 **C. SHFL engages in coercion and unfair competition at the 2012 G2E Asia
 24 Tradeshow**

25 After the failed attempt to get direct access to LT Game's patents, SHFL resorted to
 26 other tactics, including acts of unfair competition at the 2012 G2E Asia trade show. *Id.* at

1 55:14- 59:18. Regarded as one of the premier global gaming events, both LT Game Group and
 2 SHFL participated by showcasing their products at the event. *See* Feng Tr. Vol. I. at 195:6-17,
 3 **Exhibit 1.** Likewise, several gaming executives, including current and potential customers,
 4 attended. *Id.* Prior to the show, LT Game Group learned that SHFL was planning to display a
 5 product believed to infringe LT Game's Macau patents and went to the court to obtain an
 6 injunction. *See* Chun Tr. at 53:1-9, **Exhibit 5.** Pursuant to a court order, Macau customs
 7 officers came to the show and conducted a thorough inspection of SHFL's product. *See*
 8 Knowles Tr. at 151:15-153:12 (explaining that the Macau officers sat at the terminals, asked
 9 questions, and examined a product manual), **Exhibit 3.** As a result of its independent
 10 inspection, the Macau Court issued a preliminary injunction and ordered SHLF to refrain from
 11 publicly displaying the infringing products. *See id.* at 158:1-14 (confirming the existence of a
 12 court order and stating that the customs officials told SHFL to cover the product); *see also*
 13 Declaration of Pedro Cortés ("Cortés Decl.") at ¶ 4 (Dkt. 90).³

14 Angered that it would not be able to display its infringing product, SHFL retaliated. *See*
 15 Chun Tr. at 55:14-59:18, **Exhibit 5;** *see also* Andrew Scott Deposition Transcript ("Scott Tr.")
 16 at 19:8-10, pertinent portions of which are attached hereto as **Exhibit 6.**

17

18

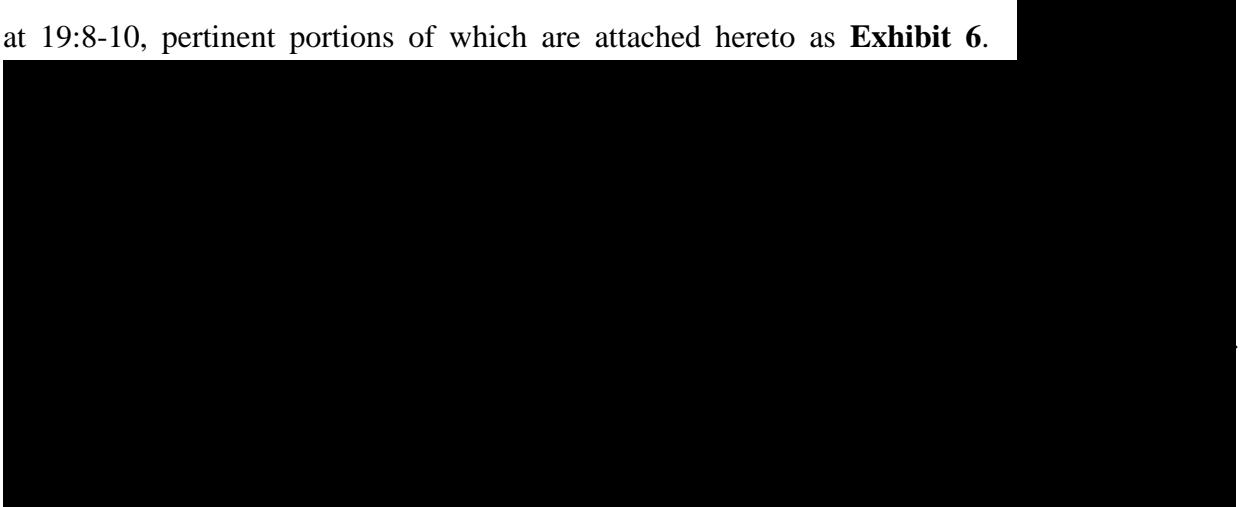
19

20

21

22

23



24 ³ This was not the only time that SHFL displayed and offered for sale products that
 25 infringed LT Game's patents in Macau, they had done this at the 2009 G2E Asia and more
 26 recently at the 2013 Macau Gaming Show. *See* Cortés Decl. at ¶ 3. Defendant's
 27 characterization of SHFL's unlawful actions in Macau and legal proceedings relating to LT
 28 Game's claims of patent infringement in Macau are incomplete and inaccurate. *See id.*, ¶¶ 3-6.
 Plaintiff's counsel has been advised by LT Game's Macau counsel that under Macau law the
 parties are not at liberty to discuss the nature and substance of the Macau prosecutor office's
 investigations and determinations.

1 [REDACTED] The ultimatum also required LT Game to not enforce its legal rights against
 2 potential infringers within two months of every future G2E show. *See* Chun Tr. at 56:4-12,

3 **Exhibit 5.** In addition, a metal barrier was placed around the LT Game Group's booth,
 4 blocking off all contact with visitors. *See id.* at 55:14-16; *see also* Scott Tr. at 29:16-21,

5 **Exhibit 6.**

6 As a result, the LT Game Group was denied access to customers and the right to display
 7 its product. *See* Chun Tr. at 55:14-56:3, **Exhibit 5.** Many customers [REDACTED]

8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 To try to mitigate the damage already caused and prevent further harm,
 13 LT Game had no choice but to drop the injunction. *See* Chun Tr. at 60:11-20, **Exhibit 5.**

14 **D. The aftermath of the 2012 G2E Asia—the Genting Group deal falls through**

15 Because of the events at the 2012 G2E Asia, LT Game International lost an imminent
 16 deal with the Genting Group. *See id.* at 62:20-63:5; Feng Decl. at ¶¶ 24-28; Michael Rumbolz
 17 Deposition Transcript (“Rumbolz Tr.”) at 99:17-103:18, pertinent portions of which are
 18 attached hereto as **Exhibit 8**; Meister Report at 5-6. [REDACTED]

19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED] *See* Chun Tr. at 63:21-25

23 (discussing unspoken deal to sign a sales contract on the second day of the show), **Exhibit 5.**

24 [REDACTED]
 25 [REDACTED]
 26 [REDACTED] *See* Feng Decl. ¶ 26; Feng Tr. Vol. I. at 131:20-132:16, **Exhibit 1.**
 27 [REDACTED]
 28

1 [REDACTED] Feng Decl., ¶¶ 24, 29; Giuffre Report
2 at 8.

3 **E. SHFL's false representations permeate the gaming community**

4 Even after the 2012 G2E Asia, SHFL continued to make false statements about LT
5 Game Group to members of the gaming community. *See* Feng Decl., ¶¶ at 8-11.
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 . . .

1 **F. SHFL's international campaign of unfair competition continues**

2 As recent as February 2014, even after LT Game International filed this lawsuit, SHFL
 3 continues to violate and disregard Plaintiff's rights by making false representations about its
 4 products and brand to its customers and prospective customers. *See id.*, ¶ 3; Feng Decl. at ¶¶ 8-
 5 11; [REDACTED]

6 [REDACTED] SHFL's demonstrated inability to
 7 compete with the Plaintiff on the merits of its product has led it to destroy Plaintiff's reputation
 8 at every opportunity. SHFL's continued unlawful attempts to keep the successful LTMG out of
 9 the global gaming market have caused Plaintiff irreparable damage. *See* Meister Report at 6-7.
 10 The Court should deny Defendant's motion for summary judgment and motion to dismiss.

11 **III. LEGAL ANALYSIS**

12 **A. Legal Standard for Summary Judgment**

13 Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is proper
 14 when "the pleadings, the discovery and disclosure materials on file, and any affidavit shows
 15 that there is no genuine issue as to any material fact and that the movant is entitled to judgment
 16 as a matter of law." Fed.R.Civ.P. 56(c); *Porter v. Cal. Dept. of Corr.*, 419 F.3d 885, 891 (9th
 17 Cir. 2005). Thus, summary judgment is inappropriate when there is a genuine issue of material
 18 fact. *Martinez v. Stanford*, 323 F.3d 1178, 1182-83 (9th Cir. 2003). A "material fact" is a fact
 19 "that might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A material fact is considered genuine "if the evidence is such
 20 that a reasonable jury could return a verdict for the nonmoving party." *Id.* The moving party
 21 has "both the initial burden of production and the ultimate burden of persuasion on a motion for
 22 summary judgment." *Nissan Fire & Marine Ins. Co. v. Fritz Co.*, 210 F.3d 1099, 1102 (9th Cir.
 23 2000). Additionally, the moving party must make a showing that is "sufficient for the court to
 24 hold that no reasonable trier of fact could find other than for the moving party." *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir. 1986); *Marvik v. Neighbors*, No. 3:11-CV-00655-LRH-WGC, 2013 WL 6008201, at *2 (D. Nev. Nov. 12 2013). The nonmoving party is

1 entitled to all justifiable inferences in its favor and “at the summary judgment stage the judge's
 2 function is not himself to weigh evidence and determine the truth of the matter, but to determine
 3 whether there is a genuine issue for trial.” *See Liberty Lobby, Inc.*, 477 U.S. at 249
 4 ([C]redibility determinations, the weighing of the evidence, and the drawing of legitimate
 5 inferences from the facts are jury functions, not those of the judge”); *Nelson v. City of Davis*,
 6 571 F.3d 924, 929 (9th Cir. 2009). “As a general rule, summary judgment is inappropriate
 7 where an expert's testimony supports the nonmoving party's case.” *Southland Sod Farms v.*
 8 *Stover Seed Co.*, 108 F.3d 1134, 1144 (9th Cir. 1997).

9 **B. SHFL's actions constitute unfair competition under the federal Lanham Act**

10 Plaintiff has provided more than ample evidence to establish its Lanham Act claim.
 11 Section 43(a) of the Lanham Act provides protection against a “myriad of deceptive
 12 commercial practices,” including false advertising or promotion. *Resource Developers v. Statue*
 13 *of Liberty–Ellis Island Found.*, 926 F.2d 134, 139 (2d Cir.1991). Moreover, this section “has
 14 been characterized as a remedial statute that should be broadly construed.” *See Seven-Up Co. v.*
 15 *Coca Cola Co.*, 86 F.3d 1379, 1383 (5th Cir. 1996). The elements of a false advertising claim
 16 under section 43(a) are: (1) a false statement of fact by the defendant in a commercial
 17 advertisement about its own or another's product; (2) the statement actually deceived or has the
 18 tendency to deceive a substantial segment of its audience; (3) the deception is material, in that it
 19 is likely to influence the purchasing decision; (4) the defendant caused its false statement to
 20 enter interstate commerce; and (5) the plaintiff has been or is likely to be injured as a result of
 21 the false statement, either by direct diversion of sales from itself to defendant or by a lessening
 22 of the goodwill associated with its products. *Southland Sod Farms*, 108 F.3d at 1139.

23 **1. SHFL's bad faith false allegations of patent infringement to
 24 Plaintiff's customers is actionable under the Lanham Act**

25 Bad faith claims of patent infringement are actionable under the Lanham Act. *See e.g.*,
 26 *Fisher Tool Co., Inc. v. Gillet Outillage*, 530 F.3d 1063, 1068 (9th Cir. 2008); *Soilworks, LLC*
 27 *v. Midwest Indus. Supply, Inc.*, 575 F.Supp.2d 1118, 1126 (D. Ariz. 2008); *Cummins- Allison*
 28 *Corp. v. Glory, Ltd.*, No. 02 C 7008, 2003 WL 22169756, at *2 (N.D. Ill. Sept. 18, 2003)

1 (“Allegations that a party falsely represented to a business’s customers that the business was
2 infringing on the party’s patent rights will support claims for unfair competition under the
3 common law and the Lanham Act”); *Minebea Co., Ltd. v. Papst*, 13 F. Supp.2d 35, 44 (D.D.C.
4 1998); *Laser Diode Array, Inc. v. Paradigm Lasers, Inc.*, F. Supp. 90, 95 (W.D.N.Y. 1997).

5 [REDACTED]

6

7

8

9

10

11

12

13

14

15

16

17

18 [REDACTED] Feng Tr. Vol. I at 139:25-140:6, 147:15-148:3, **Exhibit 1**; Feng
19 Decl. at ¶¶ 8-9. Defendant’s representations that LTMG infringes its U.S. patent were false and
20 made in bad faith. Defendant has not identified and Plaintiff is not aware of any patents or
21 patent claims that cover LTMG and its technology. Similarly, research conducted by LT Game
22 Group’s patent counsel has not revealed any patents or patent claims that disclose and/or claim
23 LTMG. *See* Meredith Decl., ¶¶ 4-6, attached hereto as **Exhibit 9**. Further, Plaintiff in no
24 uncertain terms has admitted it has offered for sale and consummated sales of LTMG in the
25 U.S., and Defendant has not asserted any claim of patent infringement in this case, despite
26 having ample opportunity to do so. *See* Feng Decl. at ¶¶ 19-22.

27 [REDACTED] Defendant’s false and baseless statements deceived Plaintiff’s customers and as a result

28 [REDACTED] Plaintiff’s deals with these customers have been compromised or lost. *See* Harris Decl. at

1 , Exhibit 7; Feng Decl., ¶¶ 8-13 (

2 [REDACTED]; Feng Tr. Vol. I 139:25-140:6, 147:15-148:3, Exhibit 1

3

4

5

6

[REDACTED] Feng Decl. at ¶¶ 12-15; Feng Tr. Vol. I at 87:5- 88:25, Exhibit 1.

7

Under this arrangement,

8

[REDACTED] See Feng Tr. Vol. I at 90:18-21, Exhibit 1.

9

In addition to false allegations of patent infringement,

10

11

[REDACTED] See Feng

12

13

14

15

Decl., ¶¶ 10-11. Like SHFL's baseless patent infringement allegations, the statement that the LT Game Group cannot sell its products, including LTMG, outside of Macau is false. There are no legal or regulatory restrictions or prohibitions against Plaintiff selling LTMG outside of Macau and LTMG has and continues to be sold and installed outside of Macau, [REDACTED]

16

[REDACTED] See Frank Feng

17

Deposition Transcript Vol. II. ("Feng Tr. Vol. II.") at, 125:6-126:12, attached hereto as Exhibit 10; Feng Decl. at ¶ 30.

19

20

[REDACTED] See Feng Tr. Vol. I. 121:11-122:16

21

(expressing surprise and anger upon learning SHFL's statements were false), Exhibit 1

22

23

[REDACTED] See id. at

24

25

26

121:11-122:16. In the case of Genting Group Resort World Manila, SHFL itself made a deal with the resort for the installation of ninety (90) of its own competing electronic gaming products while making false statements about Plaintiff's LTMG. See Feng Decl. at ¶ 11. [REDACTED]

27

28

[REDACTED] See id. at ¶¶ 10-11.

1
2
3
4
5

Indeed, several

6 customers contacted Mr. Feng to express concern—believing something was wrong with LT
7 Game Group’s products and business activities. *See Feng Tr. Vol. I. 131:5-132:3*8
9**Exhibit 7**; Scott Tr. at 41:16-19, 42:14-16, **Exhibit 6**;10 Meister Report at 5-6; Rumbolz Tr. at 99:17-103:18, **Exhibit 8**.11
12**2. Because the gaming industry is small and interconnected, SHFL’s
statements satisfy the Lanham Act’s “commercial advertising or
promotion” element**13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendant’s argument that its representations do not qualify as having taken place in a “commercial advertising or promotion” is untenable. Contrary to Defendant’s claim, advertising and promotion extends beyond traditional advertising campaigns. *See Gonzalez v. Allstate Ins. Co.*, CV 04-1548FMCPJWX, 2005 WL 5891935, *6-7 (C.D. Cal. Aug. 2, 2005) (distinguishing advertising from promotion and explaining that “promotion, as it is to be understood in the Lanham Act, is different from the traditional understanding of *advertising* as “widespread promotional activities usually directed to the public at large.”); *Semco, Inc. v. Amcast, Inc.*, 52 F.3d 108, 112 (6th Cir. 1995). Further, determining whether a communication is considered “advertising or promotion” is fact specific and turns on the nature of the industry. *Coastal Abstract Service, Inc. v. First American Title Ins. Co.*, 173 F.3d 725, 735 (9th Cir. 1999); *Seven-Up Co. v. Coca Cola Co.*, 86 F.3d 1379, 1385 (5th. Cir. 1996). Therefore, rather than focusing on widespread, impersonal activity, the inquiry focuses on the “relevant industry” and whether the communication was sufficiently disseminated in that context. *Gonzalez*, 2005 WL 5891935, *7-8. Defining the relevant purchasing public is a question of fact. *See Coastal Abstract*, 173 F.3d at 735.

1 When an industry is small and closely connected, *even direct communication with one*
 2 *individual purchaser can satisfy this element.* See *id.* at 735; *Gonzalez*, 2005 WL 5891935, *7-
 3 8 (C.D. Cal. Aug. 2, 2005). For example, in *Coastal Abstract Service*, the plaintiff hired the
 4 defendant to help it provide services for a third party mortgage company, Shearson. *Coastal*
 5 *Abstract Service, Inc.*, 173 F.3d at 729-30. During this engagement, representatives from the
 6 defendant met with representatives from Shearson and made disparaging remarks regarding the
 7 plaintiff. *Id.* The defendant offered to provide all of the services to Shearson that the plaintiff
 8 had been providing. *Id.* The court considered whether the statements, made only to Shearson,
 9 were “sufficiently disseminated to the relevant purchasing public to constitute ... ‘promotion’
 10 *within that industry.*” *Id.* at 735. The court concluded that even though the statements had
 11 been made directly to only one potential customer, based on the size of the industry, the activity
 12 constituted sufficient dissemination. *Id.*

13 As in *Coastal Abstract Service*, the gaming industry is small and interconnected,
 14 consisting of a small number of buyers that operate gaming properties throughout the world.
 15 See Meister Report at 4-6, Feng Tr. Vol. I. 93:20-94:1, **Exhibit1**. Further, word of mouth
 16 promotion, rather than traditional advertising campaigns, is widely used. See Meister Report at
 17 5 (“[t]he gaming industry consists of a relatively small community of gaming operators,
 18 suppliers, and regulators”); Feng Tr. Vol. I. 93:20-94:1 (“...gaming industry is very
 19 small...word[] travels very fast...”), **Exhibit 1**.⁴ Given the small size of the gaming industry,
 20 SHFL’s conduct satisfies the Lanham Act’s “advertising or promotion” requirement.
 21 Defendant’s false statements were made for the purpose of promoting SHFL and its products by
 22 destroying the credibility and reputation of the LT Game Group and its products and placing
 23 fear of liability for patent infringement in the Plaintiff’s customers and potential customers
 24 based on false allegations of patent rights and infringement of those rights. See e.g., Harris
 25

26 ⁴ It is well settled in this Circuit that where the nonmoving party’s qualified expert
 27 disputes a material fact in the case, summary judgment is inappropriate. See *Southland Sod*
 28 *Farms*, 108 F.3d at 1144; *Sieghler v. Kleppe*, 633 F.2d 531, 533 (9th Cir. 1980). Here,
 Plaintiff’s gaming industry expert, Alan P. Meister, opines that the gaming industry is very
 small and word of mouth travels very fast and other than Defendant’s counsel’s argument
 Defendant presents no evidence to the contrary. See Defendant’s Motion to Dismiss (Dkt. 119)
 at 20:8-10.

1 Decl., [REDACTED]. Accordingly, SHFL's false statements constitute false advertising
 2 under section 43(a) of the Lanham Act.

3 **C. SHFL's actions constitute unfair competition under Nevada common law
 4 and Macau law.**

5 Under Nevada law, the tort of unfair competition is "extremely flexible, and courts are
 6 given wide discretion to determine whether conduct is 'unfair.'" *Golden Nugget, Inc. v.*
 7 *American Stock Exchange, Inc.*, 828 F.2d 586, 591 (9th Cir. 1987); *Custom Teleconnect, Inc. v.*
 8 *International Tele-Services, Inc.*, 254 F.Supp.2d 1173, 1182 (D. Nev. 2003) (declining to limit
 9 common law unfair competition to passing off). "It would be impossible to draft in advance
 10 detailed plans and speculations of all acts and conduct to be prohibited...since unfair and
 11 fraudulent business practices may run the gamut of human ingenuity and chicanery." *People ex*
 12 *rel. Mosk v. National Research Co. of Cal.*, 201 Cal. App. 2d 765, 772 (Dist. Ct. App. 1962);
 13 *Barquis V. Merchants Collection Assn.*, 7 Cal. 3d 94, 112 (1972) (describing "unfair
 14 competition" in a California statute as "establish[ing] only a wide standard to guide courts of
 15 equity...given the creative nature of the scheming mind.").

16 Moreover, the law of unfair competition is responsive to changing conceptions of what
 17 is wrong. *See Ely-Norris Safe Co. v. Mosler Safe Co.*, 7 F.2d 603, 604 (2d Cir. 1925) (L. Hand),
 18 rev'd on other grounds, 273 U.S. 132 (1927) ("***There is no part of the law which is more
 19 plastic than unfair competition, and what was not recognized an actionable wrong twenty-
 20 five years ago may have become one today.***").

21 The Restatement (Third) of Unfair Competition provides that: "[i]f conduct is likely to
 22 interfere in a substantial manner with the ability of prospective purchasers to choose on the
 23 merits of the competing products, it will ordinarily be considered unfair." *See Restatement*
 24 *(Third) of Unfair Competition §1; see also Paccar Inc. v. Elliot Wilson Capitol Trucks LLC*,
 25 905 F.Supp.2d 675, 691 (D. Md. 2012). In analyzing unfair competition claims, courts have
 26 repeatedly rejected the argument that common law unfair competition is coextensive with the
 27 Lanham Act. *See, e.g., Giordano v. Claudio*, 714 F.Supp.2d 508, 528 (E.D. Penn. 2010)
 28 (applying the Restatement (Third) of Unfair Competition and recognizing a claim where the

1 defendant wrote a letter to a university denigrating the plaintiff researcher's reputation); *Paccar*
 2 *Inc. v. Elliot Wilson Capitol Trucks LLC*, 905 F.Supp.2d 675, 691 (D. Md. 2012) (rejecting a
 3 narrow definition of unfair competition). Moreover, the breadth of conduct illustrated in case
 4 law demonstrates unfair competition law's broad scope. *See McCarthy* citing *Gardiner v.*
 5 *Gendel*, 727 F. Supp. 799, 805 (E.D.N.Y. 1989) (sending meritless cease and desist letters
 6 alleging patent infringement); *Arthur D. Little, Inc. v. Dooyang Corp.*, 147 F.3d 47, 55-56 (1st
 7 Cir. 1998) (ordering goods without intending to pay for them); *Hutcherson v. Alexander*, 264
 8 Cal. App. 2d 126, 70 Cal. Rptr. 366 (5th Dist. 1968) (chasing plaintiff's employee who was
 9 passing out free refreshment tickets and constructing a high fence to block off customers' view
 10 of plaintiff's store and blocking traffic from coming into plaintiff's business).

11 Unfair competition under Macau law is similarly broad. Macau Com. Code, Chap. II,
 12 Art. 162. Article 162 provides that: "The making or broadcast of statements on the enterprise,
 13 products, services, or commercial relations of competitors, which are apt to diminish their credit
 14 in the market, is considered unfair except that they are exact, true and pertinent." *See id.* Thus,
 15 Macau law covers a wide variety of statements made about different aspects of a business.

16 In this case, Defendant's widespread attempt to keep LT Game International from
 17 bringing the successful LTMG to the U.S. market constitutes unfair competition under Nevada
 18 common law and Macau law. In addition to SHFL's false statements to Plaintiff's customers
 19 and prospective customers, SHFL caused the controversy and embarrassment to the LT Game
 20 Group at the 2012 G2E Asia. *See* Isaacs Tr. at 74:11-24 (demanding Reeds give LT Game an
 21 ultimatum at the 2012 G2E), **Exhibit 4**; Chun Tr. at 51:2-52:17, 70:8-71:25; 62:20-63:5,
 22 **Exhibit 5**; Knowles Tr. at 169:24- 174:14, **Exhibit 3**. The controversy at the 2012 G2E Asia
 23 started on May 22, 2012 when SHFL took the law into its own hands, ignoring a court order
 24 and used undue influence to direct the organizers of the show to coerce Plaintiff into
 25 relinquishing its intellectual property rights. *See id.* LT Game Group's booth was barricaded
 26 with a metal fence and trade show organizers threatened to shut down its vitally important
 27 power supply. *See* Chun Tr. at 57:7-8, **Exhibit 5**; Knowles Tr. at 169:24-174:14, **Exhibit 3**.
 28 Jay Chun was told to make an application to withdraw the court order and effectively relinquish

1 his intellectual property rights or LT Game would be evicted. *See id.* Plaintiff's important
2 customers, including the Genting Group, witnessed LT Game Group's fenced off booth. *See*
3 Chun Tr. at 57:7-8, **Exhibit 5**.

4 By Defendant's own admission, [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 It is not surprising that based on these egregious acts and LT Game International's
23 imminent deal with the Genting Group, SHFL's own expert, [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 Accordingly, SHFL's actions constitute unfair competition under Nevada
27 common law and Macau law.
28 . . .

D. Defendant caused Plaintiff irreparable harm by intentionally interfering with prospective and current deals

3 Defendant's contention that LT Game International lacks evidence to support this claim
4 is unavailing. Under Nevada law, to succeed on a claim for interference with prospective
5 economic advantage a plaintiff must prove: "(1) a prospective contractual relationship between
6 the plaintiff and a third party; (2) knowledge by the defendant of the prospective relationship;
7 (3) intent to harm the plaintiff by preventing the relationship; (4) the absence of privilege or
8 justification by the defendant; and (5) actual harm to the plaintiff as a result of the defendant's
9 conduct." *Wichinsky v. Mosa*, 847 P.2d 727, 729–30 (Nev. 1993). Similarly, to establish
10 intentional interference with contractual relations, the plaintiff must show: (1) a valid and
11 existing contract; (2) the defendant's knowledge of the contract; (3) intentional acts intended or
12 designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5)
13 resulting damage. *See Neumont University, LLC v. Little Bizzy, LLC*, No. 2:12-cv-1395-JAD-
14 PAL, 2014 WL 2112938, *5 (D. Nev. May 20, 2014). The knowledge element is satisfied if a
15 plaintiff can demonstrate that the defendant knew of the existing contract or can establish "facts
16 from which the existence of the contract can reasonably be inferred." *Nat. Right to Life P.A.*
17 *Com. v. Friends of Bryan*, 741 F. Supp. 807, 813 (D. Nev. 1990). Intent to harm can be
18 established if a defendant knowingly directs false statements at a plaintiff's prospective
19 customer. *Arsenal, Inc. v. Neal*, No. 2:11-cv-01628-KJD-CWH, 2013 WL 2405289, at *4 (D.
20 Nev. May 31, 2013) (holding that false product reviews in YouTube videos directed at the
21 plaintiff's prospective customers satisfied the knowledge and intent elements).

22 Here, there is no question SHFL has interfered and continues to interfere with LT Game
23 International's prospective and current deals, often making repeated attempts at derailing LT
24 Game International's entry into the U.S. market. As a result of SHFL's actions, Plaintiff has
25 suffered and continues to suffer actual harm including lost and compromised deals. *See e.g.*,
26 Feng Decl. at ¶¶ 12, 24-28; Meister Report at 6-7; Giuffre Report at 3-4; Harris Decl. at ¶¶ 3-4,

27 || Exhibit 7.

1 Defendant's assertion that LT Game International lacks evidence to support this claim is
2 baseless. SHFL either knew or had reason to know about LT Game International's prospective
3 contractual relationships [REDACTED]

4
5
6
7
8 [REDACTED] Further, given the small size of the gaming
9 community, the prevalence of word of mouth communication, paired with Defendant's
10 admission that LT Game is their biggest competition, it can reasonably be inferred that SHFL
11 was aware of Plaintiff's prospective deals. *See id.*; Meister Report at 5-6.

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 LT Game International suffered actual harm as the result of SHFL's actions, as
22 Plaintiff's prospective deals were either stalled or halted after customers expressed concern
23 over Defendant's false representations and controversy at the 2012 G2E Asia. *See generally*,
24 Giuffre Decl., attached expert report and supplemental reports; Meister Report; Feng Tr. Vol.
25 II. at 86:20-25, **Exhibit 10**; Feng Decl. at ¶¶ 12-13, 24-29. [REDACTED]

26 [REDACTED]
27 [REDACTED]
28 [REDACTED] *See* Feng Tr. Vol. II. at 86:20-25, **Exhibit 10**. As a result

1 of Defendant's actions, Plaintiff lost its deal with the Genting Group and its deal with
2 Commerce Casino was and continues to be compromised. *See Feng Decl.*, ¶¶ 12-13, 24-29;
3 [REDACTED]. With respect to Commerce, Plaintiff had to share its profits on
4 its contract with LT Game International U.S. *See Feng Tr. Vol. I.* at 90:18-21, **Exhibit 1**.

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14

15 **E. All evidence proffered by Plaintiff may be considered on summary
judgment**

16 Contrary to Defendant's contention, all of the evidence proffered by Plaintiff in this case
17 is evidence that may be considered on summary judgment. [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23

24

25

26

27

28

Further, all evidence proffered by Plaintiff that is not currently in an admissible form can be presented through direct testimony at trial, and therefore may be considered on summary judgment. *Fraser v. Goodale*, 342 F.3d 1032, 1037 (9th Cir. 2003) (“[e]vidence is admissible for summary judgment purposes if it could be presented ‘in an admissible form at trial.’”) citing *J.F. Feeser, Inc. v. Serv-A-Portion, Inc.*, 909 F.2d 1524, 1542 (3rd. Cir. 1990) (emphasis added); *see ISG Insolvency Group, Inc. v. Meritage*, No. 2:11-CV-01364-PMP-CWH, 2013 WL 3043681, at *3-4 (D. Nev. June 17, 2013); *O'Connor v.*

1 Starbucks Co., No. C 06-3706 VRW, 2008 WL 2761586, at *6 (N.D. Cal. July 14, 2008) (“...
 2 *even if Plaintiff’s testimony includes inadmissible hearsay, it may be reduced to an*
 3 *admissible form at trial by having the declarant present evidence through direct testimony.*”);
 4 *Cutrona v. Sun Health Corp.*, No. CV 06-2184-PHX-MHM, 2008 WL 4467101, at *7 (D. Ariz.
 5 Sept. 30 2008) (“**hearsay is admissible if there is any way to present it in an admissible form**
 6 **at trial**”) (emphasis added).⁵ Here, Plaintiff has demonstrated exactly how the hearsay
 7 statements at issue can be introduced at trial by identifying each declarant who made the
 8 statements. Mr. Feng has testified at his deposition and in his sworn declaration
 9 [REDACTED]

10 [REDACTED] *See*
 11 Feng Decl. at ¶¶ 10-11; Feng Tr. Vol. I. at 121:1-122:16, 125:18-126:18, **Exhibit 1**. This
 12 matter was thoroughly briefed in Plaintiff’s Response to Defendant’s Objections to Evidence
 13 (Dkt. 110).

14 **F. Even if Plaintiff’s federal claims are dismissed, this Court may hear the**
 15 **other claims in this case**

16 LT Game International has proffered more than ample evidence to sustain its federal
 17 claim under the Lanham Act, and this Court has subject matter jurisdiction over this case.
 18 Nevertheless, a district court has discretion to hear remaining claims even when federal claims
 19 are dismissed. *See Imagineering, Inc. v. Kieweit Pac. Co.*, 976 F.2d 1303, 1309 (9th Cir. 1992).
 20 In deciding whether to exercise supplemental jurisdiction when federal claims have been
 21 dismissed, a balance of factors is considered. *See id.* These factors include economy,
 22 convenience, fairness, and comity. *United Mine Workers of America v. Gibbs*, 383 U.S. 715,
 23 726, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966).

24 Given how far the parties are in this case, that the case has been pending for almost two
 25 years, and that fact and expert discovery are closed, a dismissal or transfer of this case to state
 26 [REDACTED]

27 ⁵ Under the amended Rule 56(c)(2), hearsay evidence may be considered on a motion for
 28 summary judgment so long as the proponent can explain how it can be introduced in an
 29 admissible form at trial. *See* Fed. R. Civ. P. 56(c)(2) advisory committee notes 2010
 30 amendment (“[t]he burden is on the proponent to show that the material is admissible as
 31 presented *or to explain the admissible form that is anticipated.*”)(emphasis added).
 32 Accordingly, Defendant’s reliance on *Lucey v. City of Reno* (2008 district court case) for the
 33 proposition that hearsay cannot be considered on a motion for summary judgment is no longer
 34 good law and is factually inapposite to the present case.

1 court would be inconvenient, unfair, and prejudicial to the Plaintiff. All preparation for this
 2 case has been made in contemplation of the application and practice of the Federal Rules of
 3 Civil Procedure and Federal Rules of Evidence. The federal District Court of Nevada is equally
 4 capable of addressing the state law claims in this case as a state court. This case also involves a
 5 claim under a foreign law and this court is in just as good a position to apply the foreign law as
 6 a state court. Finally, a dismissal or transfer to state court would only create an increase in legal
 7 fees, costs, and may require Plaintiff to hire additional counsel and/or replace lead litigation
 8 counsel. Plaintiff's current lead counsel, who has represented the Plaintiff in this matter for
 9 over two years and has overseen and been responsible for all substantive matters in this action,
 10 has no experience in litigation or trial in Nevada state courts.

11 **G. Defendant's argument that LT Game International lacks standing is
 12 untenable**

13 LT Game International has standing under both Article III of the U.S. Constitution and
 14 the Lanham Act.

15 **1. Plaintiff has standing under Article III of the U.S. Constitution**

16 Article III standing is required to establish a justiciable case or controversy within the
 17 jurisdiction of the federal courts. *See TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 825
 18 (9th Cir. 2011). To establish Article III standing, a plaintiff must show: "(1) it has suffered an
 19 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural
 20 or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and
 21 (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable
 22 decision." *See Henry v. Circus Casinos, Inc.*, 223 F.R.D. 541, 543 (D. Nev. 2004).

23 Article III's injury in fact element requires only an "identifiable trifle of harm," not an
 24 actual harm. *See United States v. Students Challenging Regulatory Agency Procedures*, 412
 25 U.S. 669, 689 (1973). Thus, even a threat of injury can be sufficient to establish an injury in
 26 fact under Article III. *See Central Delta Water Agency v. U.S.*, 306 F.3d 938, 947 (9th Cir.
 27 2002). Further, merely creating a chain of inferences showing how a defendant's false
 28 representations could harm the plaintiff's business can satisfy the injury in fact requirement. *See*

1 *TrafficSchool.com*, 653 F.3d at 825 (concluding that misrepresentations would tend to increase
2 defendant's market share at plaintiff's expense because consumers tended to view the
3 association created by defendant's misrepresentation favorably).

4 The factually inapposite Third Circuit case Defendant attempts to argue is misplaced.
5 *See* Defendant's Motion to dismiss (Dkt. 119) at 12:2-13. *Joint Stock Society* involves a foreign
6 product with no presence in the defendant's U.S. market. *See Joint Stock Society v. UDV N.*
7 *Amer.*, 266 F.3d 164, 177 (3rd. Cir. 2001). Moreover, though the court characterized the injury
8 as being "conjectural or hypothetical," it explained that had the plaintiff been poised to ship its
9 vodka to the United States, it might have successfully showed it faced an "imminent" threat of
10 injury sufficient to satisfy Article III's injury in fact requirement. *Id.*

11 The injury in this case far exceeds what Article III requires. Unlike *Joint Stock Society*,
12 LT Game International is not some unknown entity that lacks intent to enter Defendant's
13 market. *See* Knowles Tr. at 43:9-12, **Exhibit 3**. Plaintiff is actively marketing and selling
14 LTMG in the U.S. *See* Feng Decl. at ¶¶ 20-22

15
16
17
18
19
20
21
22
23
24
25
26

27 Defendant's persistent argument that LT Game International needs a license to conduct
28 business and therefore to suffer an injury is false and frivolous. A license is not a prerequisite

1 to a prospective deal. *See* Rumbolz Tr. at 45:18-25, **Exhibit 8**; Feng Decl. at ¶ 30. Different
 2 jurisdictions have varying gaming product manufacturing and distribution licensing
 3 requirements. *See* Feng Decl. at ¶ 30. In Australia and Malaysia, only a casino operator can
 4 apply for a license. *See id.* [REDACTED]

5 [REDACTED]

6 Thus, an entity need not
 7 have a license to be injured. In this case, LT Game International had prospective deals with
 8 casinos in the U.S. and abroad and has since closed numerous deals. Feng Tr. Vol. I. at 69:16-
 9 70:1; 131:20-132:16, **Exhibit 1**; Feng Decl. at ¶¶ 20-22. Indeed, gaming market participants
 10 often enter deals through agents and partners. *See* Feng Decl. at ¶¶ 16-18, 30. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 **2. Plaintiff satisfies the Lanham Act's statutory standing requirements**

17 In determining whether a plaintiff has statutory standing with respect to a Lanham Act
 18 false advertising claim, a court looks at two principles. First, a court considers whether a
 19 plaintiff's interests "fall within the zone of interest protected by the law invoked." *Lexmark*
 20 *Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1388 (2014). This inquiry is not
 21 "especially demanding" and the benefit of the doubt goes to the plaintiff. *See id.* at 1389. The
 22 test "forecloses suit only when a plaintiff's interests are so marginally related to or inconsistent
 23 with the purposes implicit in the statute that it cannot reasonably be assumed that" Congress
 24 authorized the plaintiff to sue. *Id.* Moreover, "*lost sales and damage to its business reputation*
 25 *—are injuries to precisely the sorts of commercial interests the Act protects.*" *See id.* at 1393
 26 (explaining that there is "no doubt" that lost sales and reputational damage are within the zone
 27 of interests protected by the Lanham Act.)(emphasis added).

1 Here, Plaintiff's injury is precisely the type the Lanham Act intends to protect against
 2 and thus satisfies the "zone of interest" statutory standing requirement. Plaintiff has alleged and
 3 provided evidence of both injury to its reputation and sales as a result of SHFL's statements and
 4 actions. *See* Third Amended Complaint (Dkt. 115) at ¶¶ 21, 23, 27-28, 32-33, 37, 42, 47, 48,
 5 52; Feng Decl. at ¶¶ 12, 24-28; Meister Report at 6-7; Giuffre Report at 3-4; Harris Decl. at ¶¶
 6 3-4, **Exhibit 7**.

7 Second, a statutory cause of action "is limited to plaintiffs whose injuries are
 8 proximately caused by violations of the statute." *Lexmark Int'l, Inc.*, 134 S. Ct. at 1390. The
 9 proximate cause inquiry looks to common-law principles, and recognizes that a plaintiff can be
 10 directly injured by a false or misleading statement even where "a third party, and not the
 11 plaintiff, ... relied on" it. *See id.* quoting *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S.
 12 639, 656 (2008). The Supreme Court expressly acknowledged that a consumer withholding
 13 trade from a plaintiff after being deceived by a defendant's advertising or promotion meets the
 14 proximate cause requirement. *See id.* at 1391. Moreover, a competitor need not prove injury
 15 when suing to enjoin conduct that violates section 43(a) of the Lanham Act. *See Southland Sod*,
 16 108 F.3d at 1145-46 ("even if Plaintiffs had failed to raise a triable issue as to causation and
 17 injury, their Lanham Act claim would still be viable to the extent it sought an injunction.").

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 Because of SHFL's statements, Plaintiff's deals with prospective
 23 customers were either lost or compromised. *See id.*; Feng Tr. Vol. I. at 62:20-63:5, **Exhibit 1**;
 24 Feng Decl. at ¶¶ 24-28; Rumbolz Tr. at 99:17-103:18, **Exhibit 8**; Meister Report at 5-6.
 25 Further, as Defendant has refused to comply with the law by continuing to make false
 26 statements to Plaintiff's customers, Plaintiff has standing to enjoin SHFL's conduct. *See* Harris
 27 Decl. at ¶¶ 5-6, **Exhibit 7**.

1 **H. Plaintiff's Third Amended Complaint satisfies the pleading requirements**
2 **under the Federal Rules of Civil Procedure.**

3 Defendant's characterization of this Court's March 26, 2014 Order is incorrect. *See*
4 Defendant's Motion to dismiss (Dkt. 119) at 6:3-9. Contrary to Defendant's assertion, unfair
5 competition claims are not subject to heightened pleading. *See* Order (Dkt. 112) at 5:14-16
6 ("nothing in the elements of a Lanham Act false advertising claim themselves triggers Rule 9's
7 heightened pleading standard."). The Court Order instead instructed "only the fraudulent-
8 conduct allegations must satisfy Rule 9; the others 'need satisfy only the ordinary notice
9 pleading standards of Rule 8(a).'" *See id.* at 6:9-12, quoting *Vess v. Ciba-Geigy Corp. USA*, 317
10 F.3d 1097, 1105 (9th Cir. 2003). As Plaintiff's Third Amended Complaint does not contain any
11 "fraud-based" averments, Rule 8(a) is the applicable standard.

12 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the
13 claim showing that the pleader is entitled to relief." *See* FRCP 8(a)(2); *Sheppard v. Evans and*
14 *Assoc.*, 694 F.3d 1045, 1049 (9th Cir. 2012). The touchstone of a court's inquiry is plausibility,
15 not probability, and whether a defendant is on notice of a claim for relief, not whether that
16 claim has been pled with specificity or particularity. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678
17 (2009).

18 As set forth above, Plaintiff's Third Amended Complaint more than pleads sufficient
19 facts stating a plausible claim for relief under Rule 8(a).

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

IV. CONCLUSION

Based on the foregoing, Defendant's motion to dismiss Third Amended Complaint, or in the alternative, motion for summary judgment should be denied.

RESPECTFULLY SUBMITTED this 5th day of June, 2014.

MEREDITH & KEYHANI, PLLC

By: /s/Dariush Keyhani
DARIUSH KEYHANI (DK9673) (*pro hac vice*)
330 Madison Avenue, 6th Floor
New York, New York 10017
Email: dkeyhani@meredithkeyhani.com

JACQUELYN S. LELEU, ESQ. (#7675)
AMANDA C. YEN, ESQ. (#9726)
JOSEPH P. SCHRAGE, ESQ. (#11270)
McDONALD CARANO WILSON LLP
2300 W. Sahara Avenue, Ste. 1200
Las Vegas, NV 89102
Email: jleleu@mcdonaldcarano.com
ayen@mcdonaldcarano.com
jschrage@mcdonaldcarano.com

Attorneys for Plaintiff LT Game International Ltd.

LVDOCS-#307550

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP, and that on the 5th day of June, 2014, a true and correct copy of the foregoing **LT GAME INTERNATIONAL LTD.'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS THIRD AMENDED COMPLAINT, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT** was electronically filed with the Clerk of the Court by using CM/ECF service which will provide copies to all counsel of record registered to receive CM/ECF notification.

/s/ Della Sampson

An employee of McDonald Carano Wilson LLP